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OFFICE OF PETITIONS

In re Application of :
Daniel B. Carr, et al. :
Application No. 10/828,623 :
Filed: April 21, 2004 :
Attorney Docket No. 2004117-0008 (NEMC :
197-DI :
ON PETITION

This is a decision on the petition, filed July 10, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to a non-final Office action mailed September 28, 2006. No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 29, 2006.

Petitioner seeks revival solely for obtaining copendency with continuing application No. 11/692,872, filed March 28, 2007, in that the necessary continuity inadvertently was not maintained at that time.

Since this application is being revived for purposes of continuity with application No. 11/692,872, and continuity having been established by this decision reviving the above-captioned application, the above-captioned application is again abandoned in favor of the continuing application.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." If the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. In no case, however, may an applicant respond later than the maximum time period set by statute. Therefore, the offer to make the belated payment of the 3-month extension of time fee under 37 CFR 1.136(a) is unnecessary. No extension fee has been charged, nor is one due on a petition for revival.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Sherry D. Brinkley
Petitions Examiner
Office of Petitions